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UNCLAS SECTION 01 OF 02 TAIPEI 002909

SIPDIS

STATE FOR EAP/RSP/TC AND EB/TPP/IPE, STATE PASS AIT/W,
USPTO AND USTR, USTR FOR WINELAND, WINTERS AND FREEMAN,
USDOC FOR 4431/ITA/MAC/AP/OPB/TAIWAN/MBMORGAN

E.O. 12958: N/A

TAGS: [ECON](#) [KIPR](#) [TW](#) [IPR](#)

SUBJECT: EZPEER NOT GUILTY OF COPYRIGHT INFRINGEMENT

REF: A. TAIPEI 458

[B](#). TAIPEI 495

[1](#)1. Summary: Taipei's Shilin District Court on June 30 announced its decision on the criminal copyright infringement case based on a complaint brought by the International Federation of Phonographic Industries (IFPI) against peer-to-peer (P2P) software provider EZPeer. The Court ruled that providing P2P service is not illegal under Taiwan law, that EZPeer did not illegally reproduce or transmit copyrighted materials, and that EZPeer is not guilty of copyright infringement. The Taiwan branch of IFPI vowed to appeal the decision. The Court's decision did not address the matter of civil liability and stated clearly that EZPeer members who use P2P services to transmit copyrighted materials may be prosecuted for criminal copyright infringement. The decision is a blow to efforts to protect copyrights in Taiwan and illustrates the difficulties rightsholders face when using Taiwan's judicial process to protect their intellectual property (IP). A specialized IPR Court could offer rightsholders more effective tools to protect their IP. End Summary.

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EZPeer Not Infringing Says Court
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[1](#)2. The first of two criminal cases filed in December 2003, based on IFPI complaints that P2P service providers EZPeer and Kuro were illegally facilitating the infringement of IFPI member music companies intellectual property, was decided June 30 by the Taipei Shilin District Court. EZPeer and its President Weber Wu were acquitted of all charges of infringing IFPI members intellectual property. The judiciary is expected to reach a decision in the case against Kuro by September 2005.

[1](#)3. In its ruling, the Court said that EZPeer did not engage in illegal reproduction, nor did it illegally publicly distribute the works of copyright holders. The Court ruled that Taiwan law does not prohibit the use of P2P networks, and the law neither bans nor limits legitimate file-sharing activities. However, the Court also said that its ruling only addressed the criminal complaint against EZPeer and did not have any bearing on any civil suit the copyright holders may file. The Court also clearly stated that users of P2P services who engage in the transmission and reproduction of copyrighted works may be liable for criminal copyright infringement.

[1](#)4. EZPeer's President Wu, in a press conference following the announcement of the verdict pledged to negotiate with the record companies on an appropriate licensing fee. IFPI has previously dismissed EZPeer and Kuro proposed licensing fee offers as unacceptably low. IFPI's Taiwan Secretary General Robin Lee vowed to appeal the Court's decision "to the end". Lee also told the press that IFPI plans to begin to target individuals in Taiwan for legal action, a strategy that he claimed has successfully reduced internet piracy in the U.S.

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TIPO Disappointed
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[1](#)5. The Director of Taiwan's Intellectual Property Office (TIPO) Copyright division (Margaret Chen) told AIT that TIPO was disappointed but that the administration had no choice but to respect the decision of the Court. She added that she expects that the case is far from over and that TIPO would continue to support efforts to educate internet users and to crack down on copyright infringers.

[1](#)6. Comment: The decision by the Shilin District Court is a blow to efforts to protect copyrights in Taiwan and illustrates the difficulties rightsholders face in educating the judiciary about proper protection of IPR. That the judge encouraged IFPI to pursue civil damages against EZPeer is cold comfort. The lack of credible civil or administrative remedies for IP holders in Taiwan means that virtually every case goes through the criminal courts, which require a higher standard of evidence to bring a conviction. Most rightsholders prefer not to file civil suits because these

require rightsholders to post a sizeable bond. Civil suits can drag on for years, judgments are often difficult to enforce, and plaintiffs risk the loss of their bond if the judgment goes against them. Taiwan has proposed creating a specialized IPR Court and continues to debate whether that court should hear criminal, civil, and administrative cases or be limited just to civil and administrative cases. A court that hears all types of IPR-related cases could usefully increase the number of tools available for rightsholders as they attempt to protect their intellectual property. End Comment.
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